

Judge Jones

FILED ENTERED
LODGED RECEIVED

MAR 11 2016

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff

v.

BRIAN FARRELL,

Defendant.

NO. CR15-029RAJ

PLEA AGREEMENT

The United States of America, by and through Annette L. Hayes, United States Attorney for the Western District of Washington, and Thomas M. Woods, Assistant United States Attorney for said District, Defendant, BRIAN FARRELL, and his attorney, Nancy Tenney, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

1. **The Charge.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to Conspiracy To Distribute Heroin, Cocaine, and Methamphetamine, in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(B), and 846, a lesser-included offense of Count 1 of the Indictment. By entering this plea of guilty, Defendant hereby waives all objections to the form of the charging document and also waives any objection

1 to venue. Defendant further understands that before entering his plea of guilty, he will be
2 placed under oath. Any statement given by Defendant under oath may be used by the
3 United States in a prosecution for perjury or false statement.

4 2. **Elements of the Offense.** The elements of the offense of Conspiracy To
5 Distribute Heroin, Methamphetamine and Cocaine, in violation of Title 21, United States
6 Code, Sections 841(a)(1), 841(b)(1)(B), and 846, are as follows:

7 First, beginning on or about a time within the last five years, and ending on or
8 about December 2014, there was an agreement between two or more persons to distribute
9 a controlled substance; and

10 Second, the defendant joined in the agreement knowing of its purpose and
11 intending to help accomplish that purpose.

12 3. **The Penalties.** Defendant understands that the statutory penalties for the
13 offense of Conspiracy To Distribute Heroin, Methamphetamine and Cocaine, are as
14 follows: imprisonment for at least five (5) years and up to forty (40) years, a fine of up to
15 five million dollars and no/100 dollars (\$5,000,000.00), a period of supervision following
16 release from prison of at least four (4) years, and a special assessment of one hundred and
17 no/100 dollars (\$100.00). Defendant agrees that the special assessment shall be paid at or
18 before the time of sentencing.

19 Defendant understands that, in order to invoke the statutory sentence set forth
20 above, the United States must prove beyond a reasonable doubt that the offense charged
21 in Count 1 involved any one of the following: (1) fifty grams or more of a mixture or
22 substance containing a detectable amount of methamphetamine; (2) 100 grams or more of
23 a mixture or substance containing heroin; or (3) 500 grams or more of a mixture of
24 substance containing a detectable amount of cocaine. Defendant waives Defendant's
25 right to require the United States to make this proof at trial and stipulates that this plea of
26 guilty includes Defendant's acknowledgment that the offense involved these quantities of
27 drugs.

1 Defendant understands that by pleading guilty to a felony drug offense, Defendant
 2 will become ineligible for certain food stamp and Social Security benefits under Title 21,
 3 United States Code, Section 862a.

4 Defendant further understands that a consequence of pleading guilty may include
 5 the forfeiture of certain property either as a part of the sentence imposed by the Court, or
 6 as a result of civil judicial or administrative process.

7 Defendant understands that supervised release is a period of time following
 8 imprisonment during which he will be subject to certain restrictions and requirements.

9 Defendant further understands that if supervised release is imposed and he violates one or
 10 more of its conditions, Defendant could be returned to prison for all or part of the term of
 11 supervised release that was originally imposed. This could result in Defendant's serving
 12 a total term of imprisonment greater than the statutory maximum stated above.

13 Defendant understands that in addition to any term of imprisonment and/or fine
 14 that is imposed, the Court may order him to pay restitution to any victim of the offense,
 15 as required by law.

16 Defendant agrees that any monetary penalty the Court imposes, including the
 17 special assessment, fine, costs, or restitution, is due and payable immediately and further
 18 agrees to submit a completed Financial Statement of Debtor form as requested by the
 19 United States Attorney's Office.

20 **4. Rights Waived by Pleading Guilty.** Defendant understands that by
 21 pleading guilty, he knowingly and voluntarily waives the following rights:

- 22 a. The right to plead not guilty and to persist in a plea of not guilty;
- 23 b. The right to a speedy and public trial before a jury of his peers;
- 24 c. The right to the effective assistance of counsel at trial, including, if
 25 Defendant could not afford an attorney, the right to have the Court appoint one for him;
- 26 d. The right to be presumed innocent until guilt has been established beyond a
 27 reasonable doubt at trial;

1 e. The right to confront and cross-examine witnesses against Defendant at
2 trial;

3 f. The right to compel or subpoena witnesses to appear on his behalf at trial;

4 g. The right to testify or to remain silent at trial, at which trial such silence
5 could not be used against Defendant; and

6 h. The right to appeal a finding of guilt or any pretrial rulings.

7 5. **United States Sentencing Guidelines.** Defendant understands and
8 acknowledges that, at sentencing, the Court must consider the sentencing range
9 calculated under the United States Sentencing Guidelines, together with the other factors
10 set forth in Title 18, United States Code, Section 3553(a), including: (1) the nature and
11 circumstances of the offense; (2) the history and characteristics of the defendant; (3) the
12 need for the sentence to reflect the seriousness of the offense, to promote respect for the
13 law, and to provide just punishment for the offense; (4) the need for the sentence to
14 afford adequate deterrence to criminal conduct; (5) the need for the sentence to protect
15 the public from further crimes of the defendant; (6) the need to provide the defendant
16 with educational and vocational training, medical care, or other correctional treatment in
17 the most effective manner; (7) the kinds of sentences available; (8) the need to provide
18 restitution to victims; and (9) the need to avoid unwarranted sentence disparity among
19 defendants involved in similar conduct who have similar records. Accordingly,
20 Defendant understands and acknowledges that:

21 a. The Court will determine his applicable Sentencing Guidelines range at the
22 time of sentencing;

23 b. After consideration of the Sentencing Guidelines and the factors in
24 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the
25 maximum term authorized by law;

26 c. The Court is not bound by any recommendation regarding the sentence to
27 be imposed, or by any calculation or estimation of the Sentencing Guidelines range
28

1 offered by the parties or the United States Probation Department, or by any stipulations
2 or agreements between the parties in this Plea Agreement; and

3 d. Defendant may not withdraw a guilty plea solely because of the sentence
4 imposed by the Court.

5 6. **Sentencing Factors.** The parties agree that the following Sentencing
6 Guidelines provisions apply to this case for Count 1:

7 a. A base offense level of 38, pursuant to USSG § 2D1.1(a)(1).

8 The parties agree they are free to argue the application of any other provisions of
9 the United States Sentencing Guidelines. Defendant understands, however, that at the
10 time of sentencing, the Court is free to reject these stipulated adjustments, and is further
11 free to apply additional downward or upward adjustments in determining Defendant's
12 Sentencing Guidelines range.

13 7. **Ultimate Sentence.** Defendant acknowledges that no one has promised or
14 guaranteed what sentence the Court will impose.

15 8. **Sentencing Recommendation.** The parties each agree to recommend a
16 sentence of eight years of imprisonment. The parties are otherwise free to recommend
17 any other terms of the sentence, including the length and terms of supervised release.
18 Defendant understands that the Court is not bound by the parties' recommendations.

19 9. **Statement of Facts.** The parties agree on the following facts. Defendant
20 admits he is guilty of the charged offense.

21 a. The Silk Road 2 (SR2) was a "hidden service" that operated on the
22 Tor network. SR2 contained a user-friendly interface with links to various categories of
23 items for sale on the site, including drugs such as MDMA (Ecstasy), LSD, cannabis,
24 hashish, methamphetamine, cocaine, and heroin.

25 b. BRIAN FARRELL initially used SR2 to purchase drugs for personal
26 use. After joining the site, FARRELL lead a "denial-of-service-attack" on the Tor
27 Market, a competitor to SR2.
28

1 c. In December 2013, FARRELL, using the moniker "DoctorClu," was
 2 elevated to a staff position on the site. Over time, FARRELL helped maintain the site,
 3 including approving and suspending vendors, dealing with help tickets, providing
 4 technical support, serving as a forum moderator, and promoting staff members. He also
 5 served as the informal spokesperson for "Defcon," the head of SR2.

6 d. During the time period that FARRELL was a staff member of SR2,
 7 there were sales of drugs far exceeding the mandatory minimums specified in section
 8 841(b)(1)(B) of Title 21. Specifically, there were sales far exceeding 100 grams of a
 9 mixture of substance containing heroin, 500 grams of a mixture or substance containing
 10 cocaine, and 50 grams of a mixture or substance containing methamphetamine.

11 10. **Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
 12 the United States Attorney's Office for the Western District of Washington agrees not to
 13 prosecute Defendant for any additional offenses known to it as of the time of this
 14 Agreement that are based upon evidence in its possession at this time, and that arise out
 15 of the conduct giving rise to this investigation. In this regard, Defendant recognizes the
 16 United States has agreed not to prosecute all of the criminal charges the evidence
 17 establishes were committed by Defendant solely because of the promises made by
 18 Defendant in this Agreement. Defendant agrees, however, that for purposes of preparing
 19 the Presentence Report, the United States Attorney's Office will provide the United
 20 States Probation Office with evidence of all conduct committed by Defendant.
 21 Defendant agrees that any charges to be dismissed before or at the time of sentencing
 22 were substantially justified in light of the evidence available to the United States, were
 23 not vexatious, frivolous or taken in bad faith, and do not provide Defendant with a basis
 24 for any future claims under the "Hyde Amendment," Pub. L. No. 105-119 (1997).

25 11. **Acceptance of Responsibility.** The United States acknowledges that if
 26 Defendant qualifies for an acceptance of responsibility adjustment pursuant to USSG §
 27 3E1.1(a), and if the offense level is sixteen (16) or greater, his total offense level should
 28 be decreased by three (3) levels pursuant to USSG § 3E1.1(a) and (b), because he has

1 assisted the United States by timely notifying the authorities of Defendant's intention to
2 plead guilty, thereby permitting the United States to avoid preparing for trial and
3 permitting the Court to allocate its resources efficiently.

4 12. **Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that if
5 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea
6 Agreement and Defendant may be prosecuted for all offenses for which the United States
7 has evidence. Defendant agrees not to oppose any steps taken by the United States to
8 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea
9 Agreement. Defendant also agrees that if Defendant is in breach of this Plea Agreement,
10 Defendant has waived any objection to the re-institution of any charges in the Indictment
11 that were previously dismissed or any additional charges that had not been prosecuted.
12 Defendant further understands that if, after the date of this Agreement, Defendant should
13 engage in illegal conduct, or conduct that is in violation of his conditions of his release
14 (examples of which include, but are not limited to: obstruction of justice, failure to appear
15 for a court proceeding, criminal conduct while pending sentencing, and false statements
16 to law enforcement agents, the Pretrial Services Officer, Probation Officer, or Court), the
17 United States is free under this Agreement to file additional charges against Defendant or
18 to seek a sentence that takes such conduct into consideration by requesting the Court to
19 apply additional adjustments or enhancements in its Sentencing Guidelines calculations
20 in order to increase the applicable advisory Guidelines range, and/or by seeking an
21 upward departure or variance from the calculated advisory Guidelines range. Under
22 these circumstances, the United States is free to seek such adjustments, enhancements,
23 departures, and/or variances even if otherwise precluded by the terms of the plea
24 agreement.

25 13. **Forfeiture.** Defendant agrees to forfeit to the United States immediately
26 Defendant's right, title, and interest in any property constituting, or derived from, any
27 proceeds obtained, directly or indirectly, as the result of Count 1, as well as any property
28

1 used, or intended to be used, in any manner or part, to commit, or to facilitate the
2 commission of, Count 1, including the following property:

- 3 a. \$35,000 in U.S. currency, and multiple silver bullion bars, both sets of
4 items seized on or about January 2, 2015.

5 14. **Waiver of Appeal.** Defendant acknowledges that by entering the guilty
6 plea required by this plea agreement, Defendant waives all rights to appeal from his
7 conviction and any pretrial rulings of the court. Defendant further agrees that, provided
8 the court imposes a custodial sentence that is within or below the Sentencing Guidelines
9 range (or the statutory mandatory minimum, if greater than the Guidelines range) as
10 determined by the court at the time of sentencing, Defendant waives to the full extent of
11 the law:

12 a. Any right conferred by Title 18, United States Code, Section 3742, to
13 challenge, on direct appeal, the sentence imposed by the court, including any fine,
14 restitution order, probation or supervised release conditions, or forfeiture order (if
15 applicable); and

16 b. Any right to bring a collateral attack against the conviction and sentence,
17 including any restitution order imposed, except as it may relate to the effectiveness of
18 legal representation; and

19 This waiver does not preclude Defendant from bringing an appropriate motion
20 pursuant to 28 U.S.C. § 2241, to address the conditions of his confinement or the
21 decisions of the Bureau of Prisons regarding the execution of his sentence.

22 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
23 attacking (except as to effectiveness of legal representation) the conviction or sentence in
24 any way, the United States may prosecute Defendant for any counts, including those with
25 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
26 Agreement.

27 15. **Voluntariness of Plea.** Defendant agrees that Defendant has entered into
28 this Plea Agreement freely and voluntarily and that no threats or promises, other than the
Plea Agreement (United States v. Farrell, CR15-0291RAJ) - 8

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

1 promises contained in this Plea Agreement, were made to induce Defendant to enter this
2 plea of guilty.

3 16. **Statute of Limitations.** In the event this Agreement is not accepted by the
4 Court for any reason, or Defendant has breached any of the terms of this Plea Agreement,
5 the statute of limitations shall be deemed to have been tolled from the date of the Plea
6 Agreement to: (1) thirty (30) days following the date of non-acceptance of the Plea
7 Agreement by the Court; or (2) thirty (30) days following the date on which a breach of
8 the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

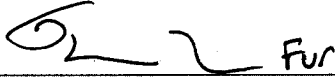
9 17. **Completeness of Agreement.** The United States and Defendant
10 acknowledge that these terms constitute the entire Plea Agreement between the parties.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


1 This Agreement binds only the United States Attorney's Office for the Western District
2 of Washington. It does not bind any other United States Attorney's Office or any other
3 office or agency of the United States, or any state or local prosecutor.

4
5 Dated this 11th day of March, 2016.

6
7 
8 BRIAN FARRELL
9 Defendant

10 NANCY TENNEY
11 Attorney for Defendant

12  For
13 TODD GREENBERG
14 Assistant United States Attorney

15 
16 THOMAS M. WOODS
17 Assistant United States Attorney
18
19
20
21
22
23
24
25
26
27
28